

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SEVENSON ENVIRONMENTAL
SERVICES, INC.,

Plaintiff,

v.

ORDER
02-CV-527

SHAW ENVIRONMENTAL, INC.,

Defendant.

This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1), on October 17, 2002. Defendant filed a motion for summary judgment on December 23, 2004, arguing that plaintiff's claim of patent infringement is barred in this case by 28 U.S.C. § 1498. On July 19, 2005, defendant also filed a motion to dismiss based upon alleged discovery abuses by plaintiff. On September 16, 2005, Magistrate Judge Scott filed a Report and Recommendation, recommending that the defendant's motion for summary judgment be granted and that defendant's motion to dismiss be denied as moot.

On October 10, 2005, both plaintiff and defendant filed objections to the Report and Recommendation. Oral argument on the objections was held on November 3, 2005.¹

¹ On November 4, 2005, the day after the oral argument on the objections to the Report and Recommendation, plaintiff moved for a stay of these proceedings pending a

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, defendant's motion for summary judgment is granted and its motion to dismiss is denied as moot. The Clerk of Court shall take all steps necessary to close the case.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: March 22, 2006

determination of jurisdiction in a case that plaintiff has brought against the United States under 28 U.S.C. § 1498 in Federal Claims Court. That motion is hereby denied.